WP(C) 3810/2004
B E F O R E
HON'BLE THE CHIEF JUSTICE (ACTING)
MR. K SREEDHAR RAO

Heard Mr. SR Bhattacharjee, learned Senior counsel assisted by Mr. S Bhattacharjee, learned counsel for the petitioner/defendant and Mr. SP Roy, learned Senior counsel, assisted by Mr. N Alam for the respondents/plaintiff.

The appellant M/S. Shanti Conductors Pvt. Ltd., is the plaintiff in the suit. The West Bengal State Electricity Board is the defendant in the suit. The defendant invited tenders for supply of electrical conductors and invited bids. The plaintiff submitted the bids and their bids were accepted.

It is the case of the plaintiff that the contract papers were signed at Guwahati and also the Bank guarantee was given by the Bank of Baroda at Guwahati. The work order was issued. The plaintiff supplied some materials. It appears that dispute arose and the contract of the plaintiff was cancelled. The plaintiff filed a Title Suit in T.S. No.101/1996 before the Additional District Judge, Guwahati challenging premature cancellation of the contract and for seeking damages.

The defendant was served and remained absent. The trial court passed an ex-parte decree. When the plaintiff in execution case tried to execute the decree by attaching the bank account of the defendant, an application was made by the defendant before the trial court for setting aside the ex-parte decree. The trial court on 19.08.2000 passed a conditional order for setting aside the ex-parte decree on the terms that the judgment debtor has to pay unconditionally Rs.10,00,000/- (Rupees Ten Lakhs) to the decree holder/plaintiff and shall deposit Rs.40,00,000/- (Rupees Forty Lakhs) in the Bank as a security for the compliance of the decree, if any, to be passed in the suit. It is unnecessary to give in details the facts relating to the attempt made by the defendant to challenge the order of the trial court passed in execution case regarding payment of Rupees ten lakhs and deposit of Rupees Forty Lakhs. However, from the records, it is seen that the trial court has passed the said order in execution case on the consent of both the parties and the counsel for both the parties have also signed the order sheet. Therefore, it is impermissible for the defendant to contend that the consent order passed by the trial court is illegal and without their consent.

The trial court after setting aside the ex-parte order, heard the parties and found that the court at Guwahati has no jurisdiction and directed return of the plaint for presentation before the proper court. The plaintiff aggrieved by the said order has filed the instant appeal in FAO No.18/2011. The defendant also filed the writ petition being WP(C) No.3286/2004 challenging the conditional order of the trial court in the execution proceeding regarding payment of Rupees Ten Lakhs and deposit of Rupees Forty Lakhs. It is also said that the court has passed order for further payment of Rupees Twenty Lakhs in favour of the plaintiff on furnishing the bank security. The rest of Rupees Twenty Lakhs is said to be in deposit as a security offered by the defendant as per the orders of the trial court.

The counsel for the appellant submits that the Bank guarantee is offered from Guwahati. The contract papers are signed at Guwahati. Therefore, cause of action arose from Guwahati. Hence the direction for return of plaint paper is bad in law.

Per contra, the counsel for the defendant/petitioner submits that a contract document clearly stipulates that the court at Calcutta shall have exclusive

jurisdiction. In view of the said clause, it is said that the jurisdiction even , if any, arisen at Guwahati gets excluded and the plaintiff is bound to file th e plaint at Calcutta.

I see a valid point in the objection of the defendant. It may be that th e court at Guwahati and the court at Calcutta have jurisdiction but when the par ties agree to confine to jurisdiction of one of the courts where the cause of ac tion arose the parties are bound by court of choice and other court which may ha ve jurisdiction gets excluded.

In that view of the matter, the rejection of the plaint is to be confirm ed. The plaintiff is directed to file the suit before the competent court at Cal cutta. It appears that the trial court has not fixed any time limit for the plai ntiff to present the plaint at Calcutta.

It is submitted that the Director who has signed the plaint has died cou ple of days ago and that the family is in bereavement. Steps are to be taken for appointment of a Director in his place. In view of the submissions made, the pl aintiff is given 60(sixty) days time from this day to file the suit before the c ompetent court at Calcutta. Accordingly the order of the trial court rejecting t he plaint is confirmed.

The writ petition filed by the defendant challenging the order of the ex ecuting court is impermissible because the said order is passed by consent order as per the records. The amount i.e. Rupees Twenty Lakhs paid, if any, to the pl aintiff is also a conditional order. If the defendant wants any modification of the order, they can approach the civil court for modification. Accordingly the w rit petition is dismissed.

The appeal also stands dismissed.

Trial court shall return the plaint papers to the counsel for the plaint iff within a period of 10(ten) days from the date of production of this order.